

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
7:05-CV-48-F(3)

STEPHEN NORMAN OSTROV and MARA :
ANN OSTROV, :

Plaintiffs, :

V. :

WALTER W. WINNER, II, and CHAD A. :
WINNER, in personam, and the S.S. Winner :
Queen, Official Number 546782, her engines, :
furniture, tackle and apparel, in rem, :

Defendants. :

**MOTION TO STRIKE DESIGNATED
EXPERT WITNESS**

COMES NOW the Defendant and moves to strike the testimony of Dr. Audie M. Rolnick, MD. The Defendants have been served with a Supplemental Rule 26(a) Disclosure on August 15, 2006. The Plaintiffs now designate a physician Audie M. Rolnick, MD in Plantation, Florida. The pleading is designated as a Supplemental Rule 26(a) Disclosure. This designation is not timely since such designation needs to be made within 30 days prior to Trial.

Presumably, Audie M. Rolnick, MD is going to testify as a physician and accordingly as an expert. The report provided does give expert medical opinions based on a single visit on June 28, 2006. The Plaintiffs expert designations were due in this case on September 1, 2005. Further, the Plaintiff, Stephen Ostrov, has not had any treatment for his back since October 14, 2002. He has testified in his deposition that he has not seen a doctor for his back in the last two years. His testimony is outlined below.

Q. "Okay, I do not have any records after August 12, 2002, which was for outpatient rehabilitation. Have you had any treatment for your back other than the October 14, 2002 possible visit at UNC Hospital since that time?"

A. "Not that I recall".

Q. "Never seen a doctor for your back in the last two years?"

A. "No".

(Deposition of Stephen Norman Ostrov page 29 line 24 to page 30 line 7.

The Defendant would like to avoid time and expense of traveling to Plantation, Florida for a deposition of Dr. Audie M. Rolnick, MD. Accordingly, the Defendant asks that the Plaintiffs proposed testimony from Dr. Rolnick be stricken and Dr. Rolnick be prevented from testifying in this matter.

Respectfully submitted his the 16th day of August, 2006.

CROSSLEY McINTOSH PRIOR & COLLIER

/s/ Andrew J. Hanley

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Attorney for Defendants

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this **MOTION TO STRIKE DESIGNATED EXPERT WITNESS** in the above-entitled cause upon all other parties to this cause by depositing a copy hereof to each said party, postage pre-paid in the United States Mail, properly addressed to:

Richard S. Hunter, Jr., Esq.

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Attorney for Plaintiffs

This the 16th day of August, 2006.

/s/ Andrew J. Hanley